



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NOVA RELOCATION INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPT, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on June 15, 2022 (the “Application”). The Tenant applied as follows:

- For an Order of Possession for the rental unit
- To recover the filing fee

An Agent for the Tenant (the “Agent”) appeared at the hearing. Nobody appeared at the hearing for the Landlord. I explained the hearing process to the Agent. I told the Agent they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Agent provided affirmed testimony.

The Tenant submitted evidence prior to the hearing. The Landlord did not submit evidence. I addressed service of the hearing package and Tenant’s evidence.

The Agent testified that the hearing package and Tenant’s evidence were sent to the Landlord by registered mail June 22, 2022. The Agent testified that the Landlord’s address was obtained from their website. The Tenant submitted documentary evidence of service which includes Tracking Number 251. The Agent confirmed Tracking Number 251 relates to the package sent. I looked Tracking Number 251 up on the Canada Post website which shows notice cards were left in relation to the package and the package was unclaimed.

Based on the undisputed testimony of the Agent, documentary evidence of service and Canada Post tracking information, I am satisfied the Landlord was served with the hearing package and Tenant’s evidence in accordance with sections 88(c) and 89(1)(c)

of the *Residential Tenancy Act* (the “*Act*”). The Landlord cannot avoid service by failing to pick up registered mail. Pursuant to section 90(a) of the *Act*, the Landlord is deemed to have received the hearing package and evidence June 27, 2022. I also find the Tenant complied with rule 10.3 of the Rules in relation to the timing of service.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Landlord. The Agent was given an opportunity to present relevant evidence and make relevant submissions. I have considered all relevant evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Tenant entitled to an Order of Possession for the rental unit?
2. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The Agent testified as follows.

The parties entered into a tenancy agreement covered by the *Act*. The Tenant rented a room from the Landlord and shared space with other tenants. The rental unit was the Tenant’s primary residence. The Landlord acted as agent for the owner of the rental unit and agreed to rent the room to the Tenant in exchange for rent. The Invoice in evidence is the documentary evidence of the tenancy agreement. The tenancy was supposed to be for a fixed term starting November 01, 2021, and ending November 01, 2022. Rent is \$1,200.00 per month due on the first day of each month. The Tenant paid a \$600.00 security deposit.

The Tenant moved into the rental unit November 01, 2021. The Tenant paid rent for June. On June 12, 2022, the Tenant was told to leave the rental unit so extermination could be done. The Tenant was told the extermination would take five days. However, the Landlord deactivated the Tenant’s FOB and told the Tenant to pick up their belongings elsewhere. The Tenant has not had access to the premises since. The tenancy was not ended in any other manner. The Agent does not know if the rental unit remains empty. The Tenant wants the Landlord to follow through with the tenancy agreement which is for a fixed term until November 01, 2022.

The Tenant submitted the following relevant documentary evidence:

- E-transfer details for a \$1,200.00 payment, \$75.00 payment and \$600.00 payment
- An Invoice setting out the rental details

Analysis

The Tenant as applicant has the onus to prove the claim pursuant to rule 6.6 of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I accept the undisputed position of the Agent that the parties entered into a tenancy agreement covered by the *Act*.

Section 54 of the *Act* states:

54 (1) A tenant who has entered into a tenancy agreement with a landlord may request an order of possession of the rental unit by making an application for dispute resolution.

(2) The director may grant an order of possession to a tenant under this section before or after the date on which the tenant is entitled to occupy the rental unit under the tenancy agreement, and the order is effective on the date specified by the director.

(3) The date specified under subsection (2) may not be earlier than the date the tenant is entitled to occupy the rental unit.

RTB Policy Guideline 51 states at page six:

Order of Possession for Tenant

Under section 54 of the RTA and section 47 of MHPTA, a tenant may apply for an order of possession for the rental unit or home site if they have a tenancy agreement with the landlord. These types of applications may arise when a tenant and landlord have signed a tenancy agreement and the landlord refuses to give

the tenant access to the rental unit, or the landlord has locked the tenant out of their rental unit.

Tenants should be aware that the director may not be able to grant an order of possession to a tenant in circumstances where another renter is occupying the rental unit; however, the tenant may file a separate application for monetary compensation from the landlord for any damage or loss they may have suffered.

If a tenant applies for an order of possession, they must be able to prove that a tenancy agreement exists between the tenant and landlord.

Based on the undisputed testimony of the Agent and documentary evidence provided, I find the following. The parties entered into a tenancy agreement for a fixed term starting November 01, 2021, and ending November 01, 2022. The Tenant moved into the rental unit November 01, 2021, and lived in the rental unit until June of 2022, when the Tenant was told to leave for the purposes of extermination. The Tenant left the rental unit for the purposes of extermination. The tenancy agreement was not ended in accordance with the *Act*. The Landlord deactivated the Tenant's FOB and therefore the Tenant no longer has access to the rental unit.

I find the Tenant remains entitled to occupy the rental unit. There is no evidence before me that the rental unit is occupied by another individual at this time. Pursuant to section 54 of the *Act*, I issue the Tenant an Order of Possession for the rental unit effective two (2) days after service on the Landlord.

Given the Tenant has been successful in the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act* and issue a Monetary Order in this amount.

Conclusion

The Application is granted.

The Tenant is issued an Order of Possession for the rental unit effective two (2) days after service on the Landlord. This Order must be served on the Landlord. If the Landlord does not comply with the Order, it may be filed in the Supreme Court and enforced as an order of that Court.

The Tenant is awarded \$100.00 and is issued a Monetary Order in this amount. This Order must be served on the Landlord. If the Landlord fails to comply with this Order, it may be filed in the Small Claims division of the Provincial Court and enforced as an order of that court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: July 11, 2022

Residential Tenancy Branch